

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY COLEY,	§	
	§	No. 78, 2009
Petitioner Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Respondent Below,	§	C.A. No. 08M-05-010
Appellee.	§	

Submitted: May 7, 2009
Decided: May 22, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 22nd day of May 2009, upon consideration of the Clerk's notice to show cause why this appeal should not be dismissed as untimely filed, the appellant's response to the notice to show cause, the State's answer to the appellant's response and the appellant's reply, it appears to the Court that:

(1) On February 19, 2009, the appellant, Leroy Coley, filed a notice of appeal from the Superior Court's January 16, 2009 denial of his appeal from a Commissioner's dismissal of his petition for return of

property. On its face, Coley's notice of appeal appeared to be untimely.¹ A notice of appeal from the Superior Court's January 16, 2009 order should have been filed on or before February 17, 2009.²

(2) On February 19, 2009, the Clerk issued a notice directing that Coley show cause why the appeal should not be dismissed as untimely.³ In his response to the notice to show cause and his reply to the State's answer, Coley states that he filed his appeal with the Superior Court in early February 2009, well within the thirty-day appeal period.⁴

(3) "Time is a jurisdictional requirement."⁵ The Clerk of this Court, or a Deputy Clerk in any county, must receive a notice of appeal within the applicable time period.⁶ Filing a notice of appeal with the Superior Court within the applicable time period does not constitute compliance with the jurisdictional requirement governing this Court.⁷

¹ See Del. Sup. Ct. R. 6(a)(i) (providing that a notice of appeal in a civil case must be filed within thirty days of the entry upon the docket of the order from which the appeal is taken). February 16, 2009 was a holiday.

² *Id.*

³ Del. Supr. Ct. R. 29(b).

⁴ The Court notes that Coley's "appeal," which he entitled "Reconsideration En Banc," was filed in the Superior Court on February 2, 2009, well past the five-day deadline for filing a motion for reargument under Superior Court Civil Rule 59(e). It appears that Coley's "Reconsideration En Banc" was returned to Coley with instructions that an appeal from a Superior Court decision must be filed with the Supreme Court. Coley then filed a "notice of appeal" in the Superior Court on February 17, 2009.

⁵ *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

⁶ Del. Supr. Ct. R. 6(a), 10(a).

⁷ *E.g., Smith v. State*, 2002 WL 31109924 (Del. Supr.). (dismissing untimely notice of appeal that appellant initially filed in error with the Superior Court).

(4) Under Delaware law, the jurisdictional defect that was created by the untimely notice of appeal cannot be excused unless Coley can demonstrate that the delay in filing was attributable to court-related personnel.⁸ It does not appear that Coley's case falls within the exception to the general rule that mandates the timely filing of a notice of appeal. Coley has not demonstrated, and the record does not suggest, that court-related personnel are responsible for the untimely filing of his notice of appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁸ See *Riggs v. Riggs*, 539 A.2d 163, 164 (Del. 1988) (excusing untimely notice of appeal that appellant mistakenly filed with Family Court when actions of Family Court personnel in response to notice of appeal suggested to appellant that appeal was properly filed).